

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERTA A. ZIMMER)	
Claimant)	
VS.)	
)	Docket No. 186,009
CENTRAL KANSAS MEDICAL CENTER)	
Respondent)	
AND)	
)	
RELIANCE NATIONAL INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

On September 12, 1996, the application of the Kansas Workers Compensation Fund for review by the Workers Compensation Appeals Board of an Award entered by Special Administrative Law Judge, Douglas F. Martin, on April 16, 1996, came on for oral argument.

APPEARANCES

Claimant appeared not, having resolved all issues between claimant and respondent by settlement hearing on February 22, 1995. Respondent and its insurance carrier appeared by and through their attorney Richard A. Boeckman of Great Bend, Kansas. Kansas Workers Compensation Fund appeared by and through its attorney Kent Roth of Great Bend, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant suffered accidental injury on the dates alleged.
- (2) Whether claimant's accidental injuries arose out of and in the course of her employment with respondent.
- (3) The nature and extent of claimant's injuries and or disability.
- (4) Whether the shoulder injury suffered on October 1, 1993, was a direct and natural consequent of a low back injury suffered in July 1993.
- (5) The Workers Compensation Fund originally objected to the appropriateness of an extra witness fee requested by respondent in the amount of \$400 originating from the deposition of Dr. C. Reiff Brown, M.D. In respondent's brief filed with the Workers Compensation Division on August 22, 1996, this request for reimbursement was withdrawn by respondent's attorney. As such that issue is withdrawn.
- (6) Whether the Special Administrative Law Judge's decision is based upon findings of pertinent facts so that a reviewing authority may determine whether the decision reached is lawful or should be remanded for issuance of a new decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board will first consider the objection by the Workers Compensation Fund to the Special Administrative Law Judge's decision which the Fund contends contains insufficient findings of pertinent fact upon which to base its decision. K.S.A. 44-551 and K.S.A. 44-555c grant the Appeals Board the right to review all acts, findings, awards, decisions, rulings, modifications of findings, or awards made by an administrative law judge. The Board is granted the authority to grant or refuse compensation, increase or diminish

the award of compensation or remand any matter to the administrative law judge for further proceeding. The review by the Appeals Board is *de novo* upon the record. As such the Appeals Board has the authority to review the decision rendered by an administrative law judge and modify that decision as the facts dictate. The failure by an administrative law judge to list specific findings of fact upon which his or her decision is based does not require a remand to the administrative law judge for a reissuance of the decision. Instead, the findings of fact as specifically set forth by the Appeals Board shall be sufficient for the parties purpose to determine the basis for any decisions rendered. As such, the Fund's request for remand to the Administrative Law Judge is denied.

The Appeals Board will next consider whether the claimant suffered accidental injury arising out of and in the course of her employment with respondent on the dates alleged. Claimant alleges two separate accidents in this matter. The first occurred on or about July 21, 23, or 25, 1993, when claimant, while lifting a patient, suffered an injury to her low back. The Workers Compensation Fund contends claimant did not suffer accidental injury arising out of and in the course of her employment but provides no evidence to rebut the testimony of the claimant in describing this injury. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

Claimant also contends that she suffered accidental injury to her shoulder while undergoing therapy for her back on October 1, 1993. Again, the Workers Compensation Fund provides no evidence to rebut claimant's testimony. If the Fund is contending that an injury suffered during physical therapy for a back injury is not compensable, the Appeals Board would merely cite the Fund to Taylor v. Centex Construction Co., 191 Kan. 130, 379 P.2d 217 (1963), Roberts v. Krupka, 246 Kan. 433, 442; 790 P.2d 422 (1990); and Helms v. Tollie Freightways, Inc., 20 Kan. App. 2d 548, 889 P.2d 1151 (1995), in support of the holding that under the Workers Compensation Act securing medical treatment is in the course of claimant's employment with the respondent and injuries occurring during ongoing medical treatment for a work-related injury are compensable.

The Appeals Board must next consider the nature and extent of claimant's injuries and disabilities and decide whether the settlement entered into between claimant and respondent was appropriate for both the back and shoulder.

The injury suffered to claimant's low back on July 25, 1993, is described as work related by both claimant and C. Reif Brown, M.D., the claimant's treating physician. Again the Workers Compensation Fund provides no evidence to contradict the opinions of Dr. Brown or the testimony of the claimant. The opinion by Dr. Brown that claimant has a 7 percent whole body impairment on the basis of the problems in claimant's low back is uncontradicted and is found by the Appeals Board to be appropriate.

Both claimant and Dr. Brown discussed the symptoms experienced by claimant in her left shoulder during physical therapy. Claimant's description of the incident whereby she

injured her shoulder while undergoing physical therapy is again uncontradicted and the Appeals Board finds claimant's injury to have arisen out of and in the course of her employment.

The settlement for claimant's back injury was in the amount of \$4,082.68. This settled all issues with the exception of future medical which was left open upon application to and approval by the Director. While the Workers Compensation Fund disputes the settlement, arguing that a 7 percent functional impairment to the body is only \$3,844.90 the slight overpayment for the back is explained by the fact that claimant has given up all possible rights associated with her back injury with the exception of future medical. As such the Appeals Board finds the settlement to claimant's low back to be appropriate.

Claimant and respondent went on to settle the claim for the injury to claimant's shoulder for \$5,963.45 which included claimant's right to future medical.

The only medical evidence in the record regarding the claimant's shoulder is that of Dr. Brown who found claimant's shoulder injury to be a minor injury with no permanency anticipated. Respondent argues that the reports of Dr. Pedro A. Murati, M.D., and Dr. John M. Melhorn, M.D., attached to the settlement hearing transcript should be considered as part of the record. There is no stipulation in the record allowing either of those medical reports into evidence for the purpose of litigating the issues between the respondent and the Fund. Evidence placed into the record at a settlement hearing from a competent physician is required for purpose of settlement pursuant to Kansas Administrative Regulation 51-3-9. However, the reports placed into evidence at the settlement hearing would not be considered as competent medical evidence for the purpose of litigating any issues between the respondent and the Fund absent the testimony of the physician or absent a stipulation by the parties to include those medical reports into the record. See K.S.A. 44-519.

As such, the Appeals Board finds the settlement of the injury to claimant's shoulder, while justified at the settlement hearing, is unsupported by any evidence in the record regarding the dispute between the respondent and Kansas Workers Compensation Fund.

The Appeals Board will next consider the assessment of liability against the Kansas Workers Compensation Fund for claimant's low back. The law in Kansas as set forth in K.S.A. 44-566, K.S.A. 44-566a, and K.S.A. 44-567 has been well litigated in this state and need not be restated herein. Dr. Brown's opinion that claimant suffered a second injury to her back after having suffered an initial injury in 1990 is uncontradicted. Also, respondent's filing of a Form 88 on claimant's back in April 1992, creates presumption that respondent had knowledge of claimant's preexisting impairment for the purpose of Workers Compensation Fund liability prior to the July 21, 1993, injury to her low back. Dr. Brown's statement that "but for" the preexisting impairment claimant would not have suffered the back injury in July 1993, is uncontradicted in the record and the Appeals Board finds

appropriate the Administrative Law Judge's assessment of 100 percent of the liability for claimant's back injury to the Workers Compensation Fund.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge Douglas F. Martin dated April 16, 1996, should be, and is hereby, modified and an award is granted in accordance with the above findings in favor of the respondent and against the Kansas Workers Compensation Fund as follows:

The Kansas Workers Compensation Fund shall be liable for all settlements, medical expenses, payments and costs associated with the injury suffered to claimant's low back on July 21, 1993. With regard to injury suffered to claimant's shoulder the Appeals Board finds respondent has failed in its burden of proving the reasonableness of the settlement of February 21, 1995, and the total costs associated with the injury to claimant's shoulder on October 1, 1993, remain the responsibility of the respondent.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed 50 percent against the respondent and 50 percent against the Kansas Workers Compensation Fund to be paid as follows:

Special Administrative Law Judge Fee	\$150.00
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IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard A. Boeckman, Great Bend, KS
Kent Roth, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director